IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1087 OF 2006

1. M/s. J.P. Enterprises & 2 ors.] .. Petitioners

Versus

1. Municipal Corporation of Gr. Mumbai and anr.] .. Respondents

Mr. M.M. Vashi i/b M/s. M.P. Vashi & Associates for the petitioners.

Mr. K.K. Singhvi, senior counsel, with Mrs. S. Ajit Kumar for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 03RD MAY, 2006

P.C. :

. Rule.

2. The petitioners had approached this Court as their tenders were returned to them by the respondents. It is not necessary to set out in extenso, the various facts. Suffice it to state that according to the respondents, the tender was non responsive for the following three reasons. 1) The Pan Card of one of the partnership of the joint venture had not been given. 2) The information which was sought for by the respondents

was replied to by a person, other than the authorised person viz. Shri Kantilal M. Shah who had given the Power of Attorney, and 3) That the tender form had not been filled in.

3. We have heard the learned counsel for the parties and the arguments advanced. Insofar as first contention is concerned, the relevant clause of the tender document viz. clause G reads as under:

> "G. Does not submit certified copies of the PAN documents and photographs of the individuals, owners, Karta of the Hindu Undivided Family, partners of the partnership firm, private limited companies, registered cooperative societies and at least two directors if number of Directors are more than two in case of private limited companies. However, in case of Public limited companies, semi government undertakings, Government undertakings, no 'PAN' documents will be insisted. The documents can be certified by the Gazetted Officer, or officers not below the rank of Assistant Engineers / Administrative Officers of Municipal Corporation of Greater Mumbai or practicing Notary approved by the Government of Maharashtra or Government of India with his stamp with or without a red seal clearly stating his name and Registration number."

. It is a mandatory conditions and it provides that a tender shall be rejected if the tenderer does not fulfill the mandatory conditions stated below. On a reading of Clause G, in our opinion, there is no

ambiguity as the Clause stands. The Clause requires the certified copies of the Pan document of the Partners of the Partnership Firm. There is no requirement in specific terms that the Partnership must submit their tenders. In the instant case, it is a joint venture, covered by Clause 4.4. Even otherwise, from the documents we find that there are two Partnerships and one proprietory concern in the joint venture. The Pan Card of one partnership and of the partners is on record. The application for Pan Card of Western Transport Company had been forwarded and the Pan Card of the proprietor of Shri Shakti Enterprises is also on record. We are clearly, therefore, of the opinion that there was compliance by the petitioners insofar as this requirement is concerned though in the letter dated 9th March, 2006, the respondent had called on the petitioner to produce the Pan Card of the joint venture partners. Neither clause (1)G nor Clause 4.4 as it stands, so requires. The first contention, therefore, in our opinion, is devoid of merit.

4. We then come to the second contention viz. submission of the information as sought for by the respondents from the joint venture. It is true that the Power of Attorney was given in favour of Shri Kantilal M. Shah. There is nothing in the mandatory conditions

which sets out that once a Power of Attorney was given in favour of one person the information sought for could not have been given to respondents by any of the partners who is a party to the joint venture. In our opinion, this could not be said to be an essential condition which would warrant rejection of tender.

5. The last contention which was raised was that the tender form had not been filled in. On page 7 of the tender document, it is provided that if any tenderer fails to comply with any of the above mandatory conditions or fails to submit relevant information with the tender, it will be open to the department to call for necessary information/clarification /document from the tenderer before proceeding further with the evaluation of the tender within a period of 7 days from the date of opening of Packet A. Clause (1)C requires that the tender form must be signed. In the instant case, we find from the documents produced by the respondents themselves that the tender form was signed. There were some gaps left in the tender form which were as under. Clause 3 regarding amount of EMD. In the tender document itself there was a corrigendum added which required that the Earnest Money Deposit be given in a separate envelope, other than Packet A. That has so been done. In other words, there is substantial

compliance insofar as Clause 3. Insofar as Clause 4 is concerned the name of the joint venture had to be given. That has been given in the very tender form itself before the signatures of the parties to the joint venture. Insofar as Clause 5 is concerned, Clause 13.1 itself requires that the tender shall remain valid for a period of 180 days from the date of the submission of the tender. It is only in the event a tender is for a shorter period it is to be treated as not responsive. In Clause 6 again, it is the name of the joint venture. Apart from that when the respondents, in terms of the Clause as set out on page 7, of requiring information after opening Packet A, the respondents had written to the petitioners by their communication of 9th March, 2006. In this communication it is not pointed out that there were omissions in filling in the tender copy. In our opinion, therefore, the respondents themselves had treated the said omission as not to be such as to warrant rejection of the tender document.

6. Learned counsel for petitioner drew our attention to the judgment of the Apex Court in **Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors., (1991) 3, S.C.C., 273**.

7. Considering the above, in our opinion, the

action of the respondents in rejecting and returning back Packet B of the petitioners, was clearly arbitrary. The said Packets were handed over to the Court when the matter was mentioned and have been taken on record by the Court. The Associate is directed to hand over the packets to the learned counsel for the respondents so as to enable the respondents to complete the entire exercise. The respondents are directed to consider the tenders of the petitioners alongwith other valid tenders.

8. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]